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In re Application of:
JAFFREY, Donald
US Application No.: 09/980,956
PCT Application No.: PCT/AU00/00631
International Filing Date: 02 June 2000
Priority Date: 4 June 1999
Attorney's Docket No.: A-71184/DJB/MAK
For: A FUEL CELL GAS SEPARATOR

PETITION UNDER
37 CFR 1.181

This decision is in response to the "COMMUNICATION OF NON-RECEIPT OF NOTICE OF MISSING REQUIREMENTS" filed by applicant via facsimile transmission on 23 April 2002 which is hereinafter treated as a petition under 37 CFR 1.181.

BACKGROUND

On 02 June 2000, applicant filed International Application PCT/AU00/00631 which claimed its earliest priority from application PQ 0788 filed in Australia on 04 June 1999. The international application designated the United States. A Demand for international preliminary examination, in which the United States was elected, was timely filed on 20 December 2000. Accordingly, the thirty-month period for meeting the requirements for entry into the national stage expires at midnight on 04 December 2001.

On 04 December 2001, applicant filed a transmittal letter for entry into the national stage of the United States which was accompanied by, *inter alia*, the requisite basic national filing fee and a copy of the international application transmitted by the International Bureau.

On 31 January 2002, the United States Designated/Elected Office mailed applicant a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 C.F.R. 1.497(a) and (b) was required. Applicant was given a TWO (2) MONTH period from the mail date of the Notification to properly respond, with extensions of time obtainable under 37 C.F.R. 1.136(a).

On 23 April 2002, applicant filed the "COMMUNICATION" via facsimile transmission which included a statement signed by Mr. Michael Kaufman that "a thorough search of our file wrapper for

Appl. No. 09/980,956 (our File No. A-71184/DJB/MAK) failed to disclose any Notice of Missing Requirements." The "COMMUNICATION" further included a printout which indicated all cases docketed with a due date of 31 March 2002.

On 01 May 2002, applicant filed a revised "COMMUNICATION" via facsimile transmission which included a statement signed by Mr. Michael Kaufman that "a search of our office docket records also indicated a Notice of Missing requirements was not received."

DISCUSSION

MPEP 711.03(c) includes the following:

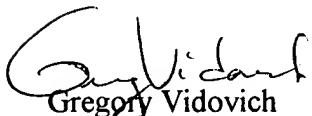
To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Applicant has successfully met the requirements as described above.

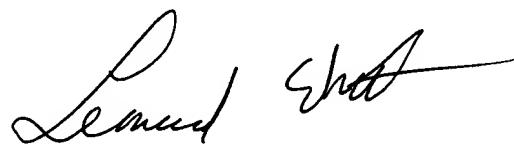
CONCLUSION

For the above reasons, the petition under 37 CFR 1.181 is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further review and processing in accordance with this decision, including mailing a new NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) to applicant indicating that an oath or declaration in compliance with 37 C.F.R. 1.497(a) and (b) is required and the due date for response being calculated from the mailing date of the new NOTIFICATION.



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